

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,       )  
                                      )  
                          Plaintiff,    )  
                                      )  
vs.                                        )  
                                      )  
DANNY ALEX MACIAS,                )  
                                      )  
                          Defendant.    )

No. 77-CR-37 -03-C ✓

FILED

DEC 31 1980


U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER NUNC PRO TUNC

Sua sponte it is ordered nunc pro tunc that the Order  
of December 30, 1980 shall be amended, by adding thereto the  
following:

"The special parole term for life, to commence at the  
expiration of the sentence imposed herein on Counts 4 and 6,  
remains unchanged." This was a valid portion of petitioner's  
original sentence and was inadvertently omitted.

It is so Ordered this 31st day of December, 1980.

  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DANNY ALEX MACIAS, )  
 )  
Defendant. )

No. 77-CR-37-C ✓

FILED

DEC 30 1980 K

Jack G. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

Now before the Court is the petition of defendant Danny Alex Macias to correct his sentence imposed on June 10, 1977, pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

On May 13, 1977, petitioner was found guilty by a jury on charges of conspiracy to distribute narcotics and aiding in the distribution of narcotics. On June 10, 1977, in U. S. District Court for the Northern District of Oklahoma he was sentenced to three terms of 25 years, on Counts 1, 4, and 6, all to run concurrently, but consecutively to sentences previously imposed by the Central District and Southern District of California in 1974. He was also fined \$25,000. Petitioner was sentenced pursuant to 21 U.S.C. §841(b)(1)(A). This statute provides for a maximum penalty of not more than 15 years, a fine of not more than \$25,000, or both. However, if the individual to be sentenced has a prior conviction under this section or any felony relating to narcotic drugs, he is subject to a maximum sentence of 30 years imprisonment (followed by a mandatory special parole term of six years) and a \$50,000 fine. In order to impose the enhanced sentence, the Court must comply with 21 U.S.C. §851. Section 851 provides that:

(a)(1) No person who stands convicted of  
an offense under this part shall be sentenced

to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the Court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied on . . . .

It is alleged by petitioner that no information was ever filed by the United States attorney with the Court or served upon defendant or his counsel prior to trial as required by Section 851(a)(1). Further no mention of any information was made during the sentencing of petitioner. Petitioner contends that failure to comply with Section 851 mandates that petitioner's enhanced concurrent sentences be reduced to the statutory maximum as set out in 21 U.S.C. §851(b)(1)(A) of 15 years on each count, to run concurrently.

The plaintiff agrees that the Motion to Correct Illegal Sentence has merit, and suggests that the illegal sentence be set aside and that the defendant be re-sentenced on all counts of the indictment on which he was convicted.

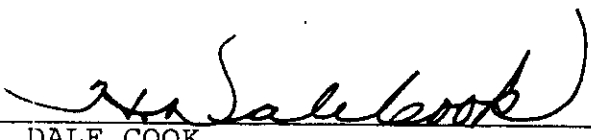
It has been held that the appropriate remedy to correct an illegal sentence is re-sentencing in which the valid portions of the original sentence are retained and the excessive portions are eliminated. U.S.A. v. Best, 571 F.2d 484 (9th Cir. 1978); Kennedy v. U.S.A., 330 F.2d 26 (9th Cir. 1964); Bozza v. U.S., 330 U.S. 160, 67 S.Ct. 645, 91 L.Ed. 818 (1947). Rule 35 of the F.R.Cr.P. provides that the Court may correct an illegal sentence at any time. In both Kennedy v. U.S.A., supra, and U.S.A. v. Best, supra, the sentences were void only as to the excessive portions and only those portions were modified. See also Ex parte Lange, 85 U.S. 163, 21 L.Ed. 872 (1874); In re Bonner, 151 U.S. 242, 258, 14 S.Ct. 323, 38 L.Ed. 149 (1893); U.S. v. Pridgeon, 153 U.S. 48, 62, 14 S.Ct. 746, 38 L.Ed. 631 (1893); Demaurez v. Squier, 211 F.2d 960 (9th Cir. 1941); Crowe v. U.S., 200 F.2d 526 (6th Cir. 1952); Duggins v. U.S., 240

F.2d 479 (6th Cir. 1957).

In the case herein, the fifteen-year portion of the three terms and their concurrent running were the lawful portions of the initial sentences given; only the excess of ten years in each sentence was illegal.

Therefore, it is hereby ordered that the defendant's sentence be reduced to 15 years as to Count 1, consecutive to the terms imposed by the California courts and now being served; 15 years as to Count 4, concurrent with Count 1; and 15 years as to Count 6, concurrent with Counts 1 and 4.

It is so Ordered this 30 day of December, 1980.

  
\_\_\_\_\_  
H. DALE COOK  
Chief Judge, U. S. District Court

DEFENDANT

CATHERINE JO ANN SANDRIDGE

DOCKET NO. 80-CR-120-BT

JUDGMENT AND PROBATION, COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	23	80

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL William R. Grimm, Court Appointed Counsel

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &  
JUDGMENT

There being a finding of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,  
Section 1709, as charged in the two count Indictment.**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that

Counts 1 and 2 - Imposition of Sentence in Counts 1 and 2 are hereby  
suspended and defendant Catherine Jo Ann Sandridge  
is placed on probation for a period of Eighteen (18)  
Months as to each count with Count 2 to run concurrent-  
ly with Count 1. All pursuant to Title 18, U.S.C.,  
Section 5010(a), under the provisions of the Youth  
Correction Act.

SPECIAL  
CONDITIONS  
OF  
PROBATION

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved as to form:

Philard L. Rounds, Jr.  
Assistant U.S. Attorney

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

DEC 23 1980

THIS DATE

By Jimmy L. Vaughn  
( ) CLERK  
X ) DEPUTY

SIGNED BY

☒ U.S. District Judge

Thomas R. Brett

Date Dec. 23, 1980

ho

UNITED STATES DISTRICT COURT

NORTHERN District of OKLAHOMA

United States of America

vs.

HUBERT REX SMITH

Criminal No. 80-CR-119-Bt ✓


ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal  
Procedure and by leave of court endorsed hereon the United States  
Attorney for the Northern District of Oklahoma  
hereby dismisses the COUNT I of the INDICTMENT against  
(indictment, information, complaint)  
Hubert Rex Smith defendant.

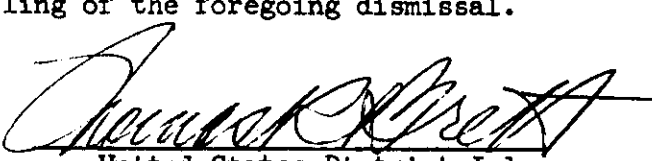
FILED  
IN OPEN COURT

DEC 23 1980

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

  
United States Attorney  
HUBERT H. BRYANT

Leave of court is granted for the filing of the foregoing dismissal.

  
United States District Judge

Date: December 23, 1980

DOJ

FORM OBD-113

8-27-74

h2

DEFENDANT

HUBERT REX SMITH

DOCKET NO.

80-CR-119-BT

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH DAY YEAR  
12 23 80

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL

Maynard Ungerman, Retained Counsel

(Name of counsel)

PLEA

XX GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING &  
JUDGMENT

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

XX GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 26, U.S.C.,  
Section 7201, as charged in Counts 2 and 3 of the Indictment.**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~the defendant~~  
~~be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~  
~~XX~~

Count 1 - Dismissed in Open Court on this date.

Count 2 - Imposition of Sentence is hereby suspended and defendant  
Hubert Rex Smith is placed on probation for a period of  
Two (2) Years, and fined \$2,500.00.

Count 3 - Imposition of Sentence is hereby suspended and defendant  
Hubert Rex Smith is placed on probation for a period of  
Two (2) Years and fined \$2,500.00. Count 3 is to run  
concurrent with Count 2, making a total sentence of Two (2)  
Years Probation and a total fine of \$5,000.00.

SPECIAL  
CONDITIONS  
OF  
PROBATION

IT IS FURTHER ORDERED BY THE COURT that defendant Hubert Rex Smith  
is to make restitution in the amount of \$4,456.00.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved as to form:

Philard L. Rounds, Jr.  
Assistant U.S. Attorney

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

DEC 23 1980

THIS DATE

By

Thomas R. Brett

Date Dec. 23, 1980.

SIGNED BY

XX U.S. District Judge

XXXXXXX

( ) CLERK  
( ) DEPUTY

DEFENDANT

VICTORIA VELON BUTLER

DOCKET NO.

80-CR-118-01-BT

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR  
12 23 80

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL

O. B. Graham, Appointed Counsel

(Name of counsel)

PLEA

XX GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

XX GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 656, as charged in the one count indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~

Count 1 - Imposition of Sentence is Suspended and defendant Victoria Velon Butler is hereby placed on probation for a period of Eighteen (18) Months, pursuant to Title 18, U.S.C., Section 5010(a), under the provisions of the Youth Correction Act.

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ORDERED BY THE COURT that defendant Victoria Velon Butler make restitution in the amount of \$1,000.00, to be made in monthly payments determined by the United States Probation Office for the Northern District of Oklahoma, Tulsa, Oklahoma.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved as to form:

Philard L. Rounds, Jr.  
Assistant U.S. Attorney

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

DEC 23 1980

THIS DATE

By

Jerry L. Vaughn

( ) CLERK  
( ) DEPUTY

SIGNED BY

U.S. District Judge

Thomas R. Brett

Date DEC-23, 1980



DEFENDANT

FLOYD DWAYNE MARKHAM

DOCKET NO.

80-CR-117-BT

## JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	23	80

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Robert W. Booth, Retained Counsel  
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &  
JUDGMENTDefendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,  
Section 922(h), Title 18, U.S.C., App. 1202(a)(1), and Title 18,  
U.S.C., Section 922(a)(6), as charged in the two count Indictment.**SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Count 1 - Two (2) Years Imprisonment, on the conditions that defendant Floyd Dwayne Markham be confined in a jail type or treatment type institution for a period of Three (3) Months, the execution of the remainder of the sentence is hereby suspended and the defendant is placed on probation for a period of Twenty-one (21) Months, to commence when the defendant is released from confinement.**SPECIAL  
CONDITIONS  
OF  
PROBATION**Count 2 - Imposition of Sentence is hereby suspended and defendant Floyd Dwayne Markham is placed on probation for a period of Two (2) Years, to commence at the time of release from confinement in Count One.****IT IS FURTHER ORDERED BY THE COURT that sentence is deferred and defendant Floyd Dwayne Markham is to report to the United States Marshal's Office, Tulsa, Oklahoma, on January 5, 1981, at 10:00 A.M.**ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATIONThe court orders commitment to the custody of the Attorney General and recommends,  
**Approved as to form:**Philard L. Rounds, Jr.  
Assistant U.S. AttorneyIt is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

DEC 23 1980

THIS DATE

By [Signature]  
( ) CLERK

( ) DEPUTY

SIGNED BY

☒ U.S. District JudgeThomas R. BrettDate Dec. 23, 1980.XXXXXXXXXX

ho

UNITED STATES DISTRICT COURT

NORTHERN District of OKLAHOMA

United States of America

vs.

DAVID TURNER

Criminal No. 80-CR-103-Bt ✓

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal  
Procedure and by leave of court endorsed hereon the United States  
Attorney for the Northern District of Oklahoma  
hereby dismisses COUNT I of the INDICTMENT against  
(indictment, information, complaint)  
David Turner defendant.

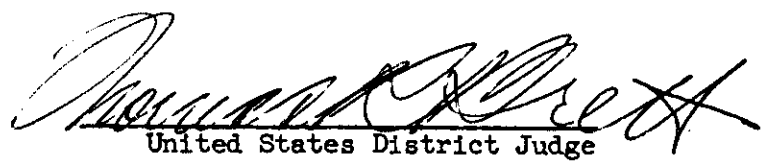
FILED  
IN OPEN COURT

DEC 23 1980

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

  
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

  
United States District Judge

Date: December 23, 1980.

DOJ

FORM OBD-113

8-27-74

DEFENDANT

DAVID TURNER

DOCKET NO. 80-CR-103-02-BT

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	23	80

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX WITH COUNSEL

Donald M. Bingham, Retained Counsel  
(Name of counsel)

PLEA

XX GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING &  
JUDGMENT

There being a finding/verdict of  
NOT GUILTY. Defendant is discharged  
XX GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 21, U.S.C.,  
Section 846 and 841(a)(1), as charged in Count 2 of the Indictment.**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~

**Count 2 - Imposition of Sentence is hereby suspended and defendant David Turner is placed on probation for a period of Four (4) Years, pursuant to Title 18, U.S.C., Section 5010(a), under the provisions of the Youth Correction Act.**

**Count 1 - Order of Dismissal filed in Open Court.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

AS A CONDITION OF PROBATION:

**IT IS FURTHER ORDERED BY THE COURT that defendant David Turner shall reside in and participate in the program of the Salvation Army Community Prerelease Treatment Center for a period of Ninety(90) Days commencing January 20, 1981, at 2:00 P.M.**

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, It is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved as to form:

Philard L. Rounds, Jr.  
Assistant U.S. Attorney

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE DEC 23 1980

By *Smyley L. Vaughn*  
( ) CLERK  
( ) DEPUTY

SIGNED BY  
X U.S. District Judge

Thomas R. Brett

Date Dec. 23, 1980

X U.S. Magistrate

DEFENDANT

JAMES LEON CUENCA

DOCKET NO. ➤

80-CR-103-01-BT

## JUDGMENT AND PROBATION/RECOMMENDATION ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	23	80

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

John Street, Retained Counsel

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYFINDING &  
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged  
☒ GUILTY.Defendant has been convicted as charged of the offense(s) of **having violated Title 21, U.S.C.,  
Section 841(a)(1) and Title 21, U.S.C., Sections 846 and 841(a)(1),  
as charged in the two count Indictment.**SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Count 1 - Imposition of Sentence is hereby suspended and defendant James Leon Cuenca is placed on probation for a period of Three (3) Years.****Count 2 - Imposition of Sentence is hereby suspended and defendant James Leon Cuenca is placed on probation for a period of Three (3) Years. Count 2 is to run concurrent to Count 1, and Counts 1 and 2 are pursuant to Title 18, U.S.C., Section 5010(a), under the provisions of the Youth Correction Act.**SPECIAL  
CONDITIONS  
OF  
PROBATION**AS A CONDITION OF PROBATION:  
IT IS FURTHER ORDERED BY THE COURT that defendant James Leon Cuenca shall reside in and participate in the program of the Salvation Army Community Prerelease Treatment Center for a period of Sixty (60) Days commencing January 5, 1981, at 2:00 P.M.**ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATIONThe court orders commitment to the custody of the Attorney General and recommends,  
**Approved as to form:****Philard L. Rounds, Jr.  
Assistant U.S. Attorney**

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

XXX U.S. District Judge

Thomas R. Brett

Date Dec. 23, 1980.

THIS DATE DEC 23 1980

BY

( ) CLERK

( ) DEPUTY

FILED  
IN OPEN COURT

DEC 23 1980

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

United States of America

vs.

RAYMOND D. TAH

Criminal No. 80-CR-101-BT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal  
Procedure and by leave of court endorsed hereon the United States  
Attorney for the Norther District of Oklahoma  
hereby dismisses the Indictment only against  
(indictment, information, complaint)  
Raymond D. Tah defendant.

Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

United States District Judge

Date: DECEMBER 23, 1980

DOJ

FORM OBD-113

8-27-74

40

DEFENDANT

RAYMOND D. TAH

DOCKET NO.

80-CR-101-BT

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	23	80

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Robert Martin, Retained Counsel

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &  
JUDGMENT

There being a finding of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,  
Section 209(a), as charged in the one count Information.**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

**Count 1 - Imposition of Sentence is hereby suspended and defendant  
Raymond D. Tah is placed on probation for a period of  
Eighteen (18) Months.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,  
**Approved as to form:**

**Philard L. Rounds, Jr.  
Assistant U.S. Attorney**

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE **DEC 23 1980**

SIGNED BY

☒ U.S. District Judge

**Thomas R. Brett**

By

CLERK

( ) DEPUTY

Date **Dec. 23, 1980.**

DEFENDANT

BOBBY RAY GOLDEN

DOCKET NO. 80-CR-62-01-C

## JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 [5/75]

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH DAY YEAR  
12-19-80☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

LARRY A. GULLEKSON, court appointed

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged.☒ GUILTY.FINDING &  
JUDGMENTDefendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 242.**

DEC 19 1980

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ONE (1) YEAR, on the condition that defendant is imprisoned in a jail type or treatment institution for a period of Sixty (60) days. The execution of the remainder of the sentence is suspended and the defendant is placed on probation for a period of Five (5) Years; said probation to commence at the expiration of the jail sentence imposed herein.

SPECIAL  
CONDITIONS  
OF  
PROBATION

In addition to the usual terms of probation, defendant is prohibited from any employment as a law enforcement officer, a security officer or any other type of work which will involve the enforcement of any sort of law, regulation, or custom during the period of probation.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

IT IS FURTHER ORDERED that the execution of sentence is stayed until January 5, 1981 at 9:00 a.m.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE 12

SIGNED BY

☒ U.S. District Judge

H. Dale Cook

By B. R.

☐ U.S. Magistrate

Date December 19, 1980

h0

DEFENDANT

RONALD LARRY MILLER

DOCKET NO.

80-CR-99-BT

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	18	80

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Wesley E. Johnson, Appointed Counsel  
(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,  
Section 1951, as charged in the one count Indictment.**

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Count 1 - Fifteen (15) Years Imprisonment.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

**IT IS FURTHER ORDERED BY THE COURT that this period of imprisonment shall run consecutive to any period of imprisonment defendant is now serving, and this period of imprisonment shall also run consecutive to any period of imprisonment imposed from any Probation Revocation, where the probation period had heretofore been entered.**

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, It is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved as to form:

Philard L. Rounds, Jr.  
Assistant U.S. Attorney

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

DEC 18 1980

THIS DATE

By

Jimmy L. Vaughn

( ) CLERK

( ) DEPUTY

SIGNED BY

☒ U.S. District Judge

Thomas R. Brett  
Thomas R. Brett

Date 12/18/80

☐ U.S. Magistrate



UNITED STATES DISTRICT COURT

NORTHERN District of OKLAHOMA

United States of America

vs.


CHUCK AUGUSTUS KAYS

Criminal No. 80-CR-125-1-Bt

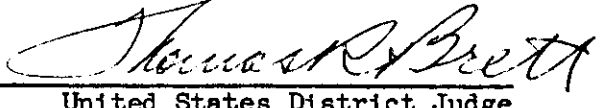
ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal  
Procedure and by leave of court endorsed hereon the United States  
Attorney for the Northern District of Oklahoma  
hereby dismisses the INDICTMENT against  
(~~indictment, information, complaint~~)

CEUCK AUGUSTUS KAYS defendant, upon the Court accepting  
the plea of guilty in the superceding Information filed this  
date, alleging the commission of voluntary manslaughter in  
violation of Title 18, United States Code, Sections 1112,  
1151 and 1152.

  
United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

  
United States District Judge

Date: December <sup>15</sup>~~11~~, 1980.

DOJ

FORM OBD-113

8-27-74

h3

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

CLAY BERNARD SYSTEMS  
INTERNATIONAL

Criminal No. 80-CR-83 ✓

FILED

DEC 8 1980

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal  
Procedure and by leave of court endorsed hereon the United States  
Attorney for the Northern District of Oklahoma  
hereby dismisses ~~the~~ Counts 1 through 6 of the Indictment against  
(indictment, information, complaint)  
Clay Bernard Systems, International, only, defendant.

Kenneth P. Snobe  
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

W. J. Sale  
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

Criminal No. 80-CR-83 ✓

vs.

CLAY BERNARD II

FILED

DEC 8 1980 *nm*

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses the entire Indictment against Clay Bernard II only,  
(indictment, information, complaint)  
\_\_\_\_\_ defendant.

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

*Kenneth F. Swobbe*  
Asst. United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

*Ken Salubook*  
United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY EDWARD CARTER,

Defendant.

No. 76-CR-118-B  
80-C-536-C

FILED

DEC 8 1980

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

Now before the Court for its consideration are Roy Edward Carter's motion pursuant to Title 28 U.S.C. 2255 to vacate, set aside, or correct sentence by a person in federal custody, and the Government's answer thereto.

The movant was charged by indictment in Case No. 76-CR-118-B with a violation of Title 18 U.S.C. §1992, in that he did willfully attempt to disable the engine of a train operated in interstate commerce by firing a pistol at the engine of said train. Movant entered a plea of guilty to the charge and on October 13, 1976, was sentenced to eight (8) years until discharged, as provided in the Federal Youth Corrections Act, Title 18 U.S.C. §§4216, 5010(c), and 5017(d).

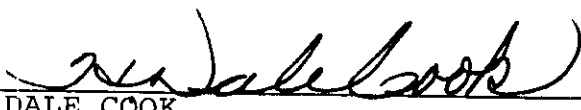
The grounds raised in support of the present motion are that Judge Allen E. Barrow, the sentencing judge, had indicated at the time of sentencing that consideration would be given to a reduction in movant's sentence if certain State charges pending against the movant in connection with the incident giving rise to the federal charge were dismissed. There is a letter in the file dated January 28, 1977 indicating that the state charges referred to by Judge Barrow had been dismissed. On February 3, 1977, the movant filed a Motion for Reduction of Sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure based upon these same grounds.

On February 7, 1977, that motion was overruled, the Court finding that the sentence imposed was lenient and proper under the circumstances. As in the Rule 35 motion, the movant now asks that the Court modify his sentence from eight (8) years to six (6) years in accordance with Judge Barrow's statement at the time of sentencing.

The Government interposes no objection to the relief requested by the movant. There is therefore no need for an evidentiary hearing. The Court likewise finds merit in the present motion and that the movant's sentence should therefore be corrected to the six (6) year Federal Youth Corrections Act sentence.

It is therefore ordered that the sentence previously imposed upon the movant Roy Edward Carter in 76-CR-118-B is hereby corrected to provide for his treatment and supervision until discharged under the Federal Youth Corrections Act as provided by Title 18 U.S.C. Sections 5010(b), and 5017(c).

It is so Ordered this 8<sup>th</sup> day of December, 1980.

  
H. DALE COOK  
Chief Judge, U. S. District Court

DEFENDANT

ANTHONY LEE MAYBERRY

DOCKET NO.

80-CR-108-BT

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	02	80

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Howard Sell, Retained Counsel

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

FINDING &  
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,  
Section 2313, as charged in the Indictment.**

FILED  
DEC 2 1980

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**Count 1 - Three (3) Years Imprisonment.**

SENTENCE  
OR  
PROBATION  
ORDER

**IT IS FURTHER ORDERED BY THE COURT that defendant Mayberry may become eligible for parole after serving Nine (9) Months of his period of imprisonment as provided in Title 18, U.S.C., Section 4205(b) (1).**

SPECIAL  
CONDITIONS  
OF  
PROBATION

**Defendant Mayberry is to report to the U.S. Marshal's Office, Tulsa, Oklahoma, on December 15, 1980, by 1:30 P.M., by he informed of the institution where he is to be incarcerated, and to sign an acknowledgment that he has been informed of such designation.**

**It is further ordered that defendant Mayberry report to the specified institution via his own transportation on January 5, 1981, by 10:00 A.M.**

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

Approved as to form:

Paula S. Ogg  
Paula S. Ogg  
Assistant U.S. Attorney

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

SIGNED BY

U.S. District Judge

Thomas R. Brett

Thomas R. Brett

Date Dec. 2, 1980

THIS DATE DEC 2 - 1980

By

Jonny L. Vaughn

( ) CLERK  
( ) DEPUTY

DEFENDANT

CLAY BERNARD SYSTEMS INTERNATIONAL, LTD.

DOCKET NO. 80-CR-83-02-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared ~~in person~~ on this date 12 MONTH 2 DAY 80 YEAR by counsel ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel. ☒ WITH COUNSEL Phillips Breckinridge (Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged ☒ GUILTY. Defendant has been convicted as charged of the offense(s) of **having violated Title 18, Section 371, as charged in Count Seven (7) of the Indictment.**

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~Defendant is hereby committed to the custody of the Attorney General for a period of five years for the purpose of probation.~~ IT IS ORDERED that the Defendant is fined the sum of \$500.00.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, It is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE 12-2-80

SIGNED BY ☒ U.S. District Judge

H. DALE COOK

☐ U.S. Magistrate

Date December 2, 1980

By Rosanne J. Miller ( ) CLERK ☒ DEPUTY

ho

DEFENDANT

CLAY BERNARD, II

DOCKET NO. 80-CR-83-C

## JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this date

MONTH	DAY	YEAR
12	2	80

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL L. K. Smith and Chris Rhodes, III

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYFINDING &  
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.Defendant has been convicted as charged of the offense(s) of **having violated Title 18, Sections 371, 287 and 8, as charged in the Information.**

DEC 2 1980

SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~The defendant hereby committed to the custody of the Attorney General for the purpose of being deported to his country of origin.~~

THE IMPOSITION OF SENTENCE in Counts One, Two and Three is hereby suspended and the Defendant is placed on probation for a period of Five (5) Years from this date, as to each count; said probation imposed in Counts Two and Three to run concurrent with the probation imposed in Count One.

IT IS FURTHER ORDERED that the Defendant is fined \$10,000.00 as to each of Counts One, Two and Three; for a total fine of \$30,000.00.

SPECIAL  
CONDITIONS  
OF  
PROBATION

IT IS FURTHER ORDERED that the Defendant shall stand committed until the fine is paid, but the execution of commitment is stayed for a period of seven (7) days from this date.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE 12-2-80

SIGNED BY

☒ U.S. District Judge

H. DALE COOK

Date December 2, 1980

By Rosanne J. Miller

( ) CLERK

☒ DEPUTY☐ U.S. Magistrate



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT EUGENE COTNER,

Defendant.

No. 73-CR-103 ✓

80-C-384-C

FILED

O R D E R

DEC 1 1980 *mm*

Jack C. Silver, Clerk  
U.S. DISTRICT COURT

Now before the Court is the motion of petitioner Robert E. Cotner, pro se, to vacate his sentence imposed under 28 U.S.C. §2255 in Case No. 73-CR-103 in the Northern District of Oklahoma on January 22, 1974. The sentence imposed on petitioner consisted of one year each on two counts of mail fraud, to run concurrently. Petitioner admits that he entered a plea of nolo contendere in 73-CR-103 and further alleges that U. S. District Judge Allen Barrow agreed, in open court, to accept a nolo contendere plea, with the understanding that he would sentence the petitioner herein to a one-year suspended sentence, but would expunge it one year after defendant located the main witness needed for defense and filed a motion to withdraw his nolo contendere plea.

Petitioner states four grounds on which relief should be granted. First, he claims that he was denied effective assistance of counsel, and was refused a hearing on his request to withdraw his plea and/or to appeal. Secondly, he alleges that his conviction was obtained by the unlawful failure of the prosecution to disclose evidence favorable to the defendant, that the indictment was brought in the wrong judicial district, and that the prosecution knew of both errors and failed to disclose them. Thirdly, petitioner

alleges "newly discovered" evidence, apparently consisting of alleged perjury by a witness and a recently-discovered defense witness. Fourthly, petitioner alleges that the indictment and conviction was obtained by evidence obtained pursuant to an illegal lineup or identification procedure, and an illegal search and seizure.

The Court has examined the record and concludes that the motion is frivolous and wholly without merit. The record reflects that on September 5, 1973 an indictment was filed in U. S. District Court for the Northern District of Oklahoma. On November 15, 1973, the defendant appeared in Court, represented by Elmore A. Page, retained counsel, was arraigned and entered a plea of Not Guilty as to Counts 1 and 2. On December 12, 1973 the case was set for jury trial. On January 17, 1974 petitioner appeared in Court, represented by counsel, for the purpose of changing his plea of Not Guilty to Nolo Contendere over the government's objection. The record also shows that the Court found a factual basis for the plea. On January 22, 1974 sentence was entered, and on February 4, 1974 defendant began serving his sentence. On July 25, 1974, the case was called for hearing on defendant's motion that time spent under release on bond be deducted from his sentence. Defendant was represented by counsel. The motion was denied and defendant appealed. On February 14, 1975 the Mandate of the Tenth Circuit Court of Appeals issued, dismissing the appeal for mootness inasmuch as appellant had already served the sentence on which he sought bond time credit.

It is well-established that for all practical purposes the plea of nolo contendere is treated the same as a plea of guilty. Fisher v. Schilder, 131 F.2d 522 (10th Cir. 1942); U.S. v. Feltman, 451 F.2d 153 (10th Cir. 1971); Clark v. Western District of Oklahoma, 399 F.Supp. 305, 307 (N.D.Okla. 1975). Such a plea waives all non-jurisdictional defects in

the proceedings against the accused. Clark v. Western District of Oklahoma, supra; United States v. Grayson, 416 F.2d 1073 (5th Cir. 1969), cert. denied, 396 U.S. 1059, 90 S.Ct. 754, 24 L.Ed.2d 753, reh. denied, 399 U.S. 917, 90 S.Ct. 1114, 25 L.Ed.2d 415. As the court in Clark stated, "a plea of guilty [nolo contendere] voluntarily made forecloses an accused's right to object to the manner in which he was arrested or how the evidence may have been obtained against him. The plea is a waiver of all non-jurisdictional defenses and a sentence which would follow such a plea of guilty [nolo contendere] is a result of the plea and not the evidence theretofore obtained." Mahler v. United States, 333 F.2d 472, 474 (10th Cir. 1964), cert. denied 379 U.S. 993, 85 S.Ct. 709, 13 L.Ed.2d 613; United States v. Doyle, 348 F.2d 715 (2nd Cir. 1965), cert. denied 382 U.S. 843, 86 S.Ct. 89, 15 L.Ed.2d 84; Bailey v. United States, 324 F.2d 632 (10th Cir. 1963); Atkins v. State of Kansas, 386 F.2d 819 (10th Cir. 1967).

Finally, there is simply no truth in petitioner's assertion that he was denied effective assistance of counsel. As indicated by the record, petitioner was adequately represented by counsel at his arraignment, change of plea hearing, and at the hearing on his motion for bond time. The appeal of the denial of this motion was filed by the petitioner pro se. Thus the record does not support petitioner's claim, nor does he offer additional facts in support of his claim. The burden on the petitioner to establish a claim of ineffective assistance of counsel is great. Ellis v. Oklahoma, 430 F.2d 1352 (10th Cir. 1970). The standard for competency of counsel at the time petitioner's plea was entered was that stated in Basker v. Crouse, 426 F.2d 531, (10th Cir. 1970); Frand v. U.S., 301 F.2d 102 (10th Cir. 1962): Unless the Court can say that the incompetency of the attorney was such

as to amount to making the proceedings a mockery, sham, or farce, collateral relief must be denied. The current standard in the Tenth Circuit, as stated in Dyer v. Crisp, 613 F.2d 275 (10th Cir. 1980), reh. denied Feb. 20, 1980, cert. denied, 100 S.Ct. 1342, requires that representation not fall below that expected of a reasonable, competent, and skillful defense attorney. A review of the record shows that under either standard, there is no evidence of a breach of duty by petitioner's counsel or that his advice was not within the range of competence required of him. Further, there is no evidence in the record, nor has the petitioner alleged any facts in support of his contentions as to denial of effective assistance of counsel or as to refusal of a hearing on a request to withdraw his plea and/or to appeal.

The petitioner's application together with the files and records of petitioner's criminal case conclusively show that there are no material issues of fact and that petitioner is not entitled to relief. It is well-established that when a motion is made to vacate a sentence, the movant must set forth facts and not merely conclusions. (Sobell v. U.S., D.C.N.Y. 1967, 264 F.Supp. 579, affirmed 378 F.2d 674, cert. denied 88 S.Ct. 780, 389 U.S. 1051, 19 L.Ed.2d 842, rehearing denied 88 S.Ct. 1025, 390 U.S. 977, 19 L.Ed.2d 1197).

In addition, as to petitioner's allegations that his retained attorney failed to take an appeal, it is a clear requirement that petitioner indicate plain error in the original trial proceedings as a condition to granting a motion for vacation of sentence. Fennell v. United States, 339 F.2d 920 (10th Cir. 1965), cert. denied 382 U.S. 852, 86 S.Ct. 100, 15 L.Ed.2d 90 (1965). No evidence has been advanced by petitioner nor does the record show plain error in the original proceedings.

For all these reasons, petitioner's motion to vacate

sentence is hereby overruled.

It is so Ordered this 1<sup>st</sup> day of December, 1980.

H. Dale Cook  
H. DALE COOK  
Chief Judge, U. S. District Court